
MONTANA REAL ESTATE

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From the Chair

By John Beagle

WHAT A COUNTRY

Well, here it is January 2001 already. What happened to last year? I hope it's not only me, but as I get older it seems like time just flies away! The days, months and years go by so fast.

The recent holidays of Thanksgiving, Christmas and New Years are times for reflecting on the many, many things we should be thankful for. This, of course, includes our families, friends, health, lifestyle and personal freedoms. I think it is very easy to take a lot of these liberties for granted, including our personal freedoms. This country is still the greatest country in the world and as a republic democracy we are afforded the rights of wealth accumulation and private property ownership. This is not the case in many countries around the world and is reason for much envy. Many people from different countries look at our lifestyle and want to make the United States their home. They hope to accomplish in this country what would be impossible to do in theirs. This accounts for our large numbers of immigration, both legal and illegal.

Last November my wife and I were fortunate to be able to spend 3 weeks in mainland China as part of a tour through the MSU Alumni Association. We, and 35 other

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New RESPRO Guide to Help Online Agents Avoid RESPA Violations

The Real Estate Services Providers Council (RESPRO) has published an updated RESPA guide for real estate sales associates, loan officers, mortgage brokers, title agents and other front-line salespersons.

According to RESPRO Executive Director Sue Johnson, the book, "RESPA Guide to Referral Fees: Do's & Don'ts for Salespersons," is a response to increased marketplace confusion over what referral activities are and are not allowed under the Real Estate Settlement and Procedures Act.

"May of our members' employees and real estate agents associates have been bombarded by offers of fees, part-time employment, chances to win prizes, and other incentives in exchange for referrals," said Johnson, who noted the trend has particularly increased since the advent of the Internet.

"We updated our RESPA Guide to help our members and others in the industry, with their legal counsel, to educate their front-line salespersons about which offers are and which are not covered under the Act."

RESPA was first passed in 1974 to prohibit "kickbacks" for the referral of home buying and financing services. The law is currently being rewritten, but a consensus had been difficult to find in the rapidly evolving financial services arena.

RESPRO has been consistently at the forefront of working with HUD and Congress on what a new RESPA should look like.

The RESPRO guide describes RESPA's basic prohibitions and penalties for non-compliance. It also describes real-life scenarios involving incentive offers – in both the paper-based and Internet world – and comments on whether the offer described in each scenario violates RESPA.

The guide is available from RESPRO headquarters: 202-408-7038 or by e-mail at: respro@erols.com.

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people, visited all of the places one should visit when going to China including: The Great Wall, Tian an men Square, Forbidden City, Terra Cotta Warriors, Three Gorge Dam, etc. etc. However, it was the culture and way of life of the Chinese people that made the most impression on me. For one thing, there were a lot of them. Being from Montana (and especially from Eastern Montana) we live in a sparsely populated area. The cities we visited in China were anything but this, being between 6 million and 33 million (Ghongqing) in population. There were people and bicycles everywhere we went.

The Chinese people are a very industrious people. They are constantly working hard to try to improve their life styles, but the task at hand is an ominous one. Their attitude to westerners was one of friendliness, politeness and curiosity. However, most of them have absolutely nothing, or very little, in the form of assets. Very few have cars and the government does not encourage them as the present road systems are not adequate and could not handle the large increases in traffic that would be the result of additional automobile ownership. Instead, the main methods of transportation in the larger cities (*Beijing, Xian, Kunming, Chongqing, and Guilin*) were walking, bicycles (everywhere) and public transportation.

Their housing is another issue. Although we did not see any examples of "cage living" our guide told us that it still exists today, although it is not as prevalent as it was in the past. Cage living is where one person leases a typical apartment (usually 600 sq. ft.) from the government (or developer) and moves in 35 bunk beds for a total of 70 individual beds. These individual beds are then "subleased" out to individual families of up to 2-4 people. They put a piece of chicken wire around their "bed" and hang cloth on the wire for privacy. Hence, the term "cage." These people share the apartment's one kitchen and bathroom facility. There could be over 150 people living in this 600 sq. ft. apartment.

Most of the Chinese people we saw had their own housing in the form of apartment living. The cities were packed with large tall drab-looking apartment buildings that had been built by the Russians many years ago. Nearly all of these buildings were 15 to 20 stories tall and few had elevators. The new apartment buildings being built now do all have elevators, but they don't start until the 10th floor. The government feels that it is good exercise for the people to climb stairs. All of the apartments are quite small (400-600 sq. ft.) and many times extended families live there.

I could go on and on about the living conditions in China but that isn't the point of this article. The point being that when I returned home I took a look at my home, my yard, my car, my office, my assets. Things that a lot of times I take for granted. I realized that it wasn't just my hard work that got me what I have today, but it was also (mostly) due to the fact that I live in the USA. That fact enables people of all races and creeds of this country to work hard, accumulate wealth and to prosper. No matter how hard an individual Chinese person works, or how much education this person receives, the chances for the quality of life like mine or yours are close to nonexistent.

We all complain about the government at times. Sometimes we complain a lot (around tax time). However, we should try to remember that no matter how bad we think our situation is that there are millions and millions of others in this world who would gladly trade places with us. We may think that our problems are serious but little do we know what real problems are. Next time you thank God for your health, your wealth, your family and your friends you should also thank God that you live in the United States of America.

Check us out on the Web. We have a new, improved site to assist you with your real estate licensing needs. You can download forms, statutes & rules, CE calendar, hotlink to AMP and more. Bookmark us at:
<http://commerce.state.mt.us/LICENSE/pol/>

EDUCATION NOTES

By Mike Meredith

As we come to the end of another year I am looking back on the education program for the past year. At the end of the past year the Board's Education Committee had 227 approved courses on the continuing education roster. Of those courses, about ten percent were available through distance education with the remainder being traditional courses. As we look to 2001, we are receiving questions about the availability of continuing education offerings related to commercial real estate and real estate investment. We have approved a few courses in these areas, but we have had very few commercial and investment courses submitted for approval. Although we cannot guarantee how many licensees would attend additional classes in commercial and investment, we continue to field questions about these areas. We also hope to get some courses that would more specifically address broker management issues on our approved list. We will continue to sponsor the Education Caravan and to make the Rookie CE class available in more locations. During the spring of 2001 we plan to host another workshop for real estate educators, many of whom are licensees.

One of the primary successes of the past year was the introduction of the Rookie CE class. The response to the class was very good and the evaluation of it by attendees was excellent. As we

move into 2001 the class becomes mandatory for all new licensees who obtain their initial salesperson's license after January 1, 2001. New licensees must take the Rookie CE class prior to December 31 of 2001. Tentative plans now include offering the class in Kalispell in May, Bozeman in June, Billings in September, Missoula in November and a final class in Helena during the first week in December. I would like to stress that the Rookie CE class is an extension of pre-licensing education and it does not replace the training provided by brokers. The class is very basic and provides information necessary for getting started in real estate without making costly errors which impact clients or supervising offices. Specific dates of the course will be made available as they are set. Details will be sent to license applicants and new licensees when they apply and receive their licenses.

The Board of Realty Regulation now has its own website within the Department of Commerce site. It can be accessed at <http://commerce.state.mt.us/LICENSE/pol>

The website contains a current calendar of available continuing education classes, complete with contact names and numbers. We hope that providers will keep us apprised of scheduled courses so that we can maintain a complete and accurate list of classes. The calendar will also contain an up to date list of approved distance education classes, contacts and phone numbers. The website should make finding out about education offerings quick and easy. It should become the primary source of real estate continuing education for Montana licensees.

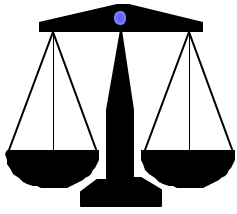
THE LEGISLATURE IS IN TOWN

The legislature is in town and hard at work. They are considering several issues proposed by the State of Montana on behalf of the Board of Realty Regulation.

The first issue is housekeeping to eliminate the specific qualifications for the Executive Secretary position in statute. The Division has proposed this change to all boards with Executive positions. This will allow the Board more flexibility in establishing the requirements for the job when advertising for a new employee.

The second issue, and one more pertinent to your livelihood is the elimination of the owner and associate designation from the broker license. The Board is proposing an individual either hold a sales license or a broker license and eliminate the two tiers within the broker category. The rationale behind this is that the qualifications for the two licensing designations is identical. The only difference is what is declared at the time of licensing. The statute calls for a broker owner to have an owner interest in the real estate company, but we do not check those interests when issuing a license. This would also allow a current broker associate to supervise their licensed personal assistant. Currently those licensed personal assistants are licensed under the broker owner. The broker owner is typically not the one who hires or supervises the activities of the licensed personal assistant. This seems to make good sense to move the requirements more in line with current practice.

The Board has voted to hold off on the issue of Mandatory Errors and Omissions Insurance for this session. It was unclear by our survey whether the licensees supported this program or saw the need. The results of the survey were virtually split on the issue. We will study the issue more and perhaps try again next session. We do appreciate all of you who returned those surveys to us.



COMPLAINT SCREENING COMMITTEE

We have had three Complaint Screening Committee meetings since our last newsletter. Two of them were packed full of complaints and investigations. The Screening Committee earned their per diem at those meetings.

At the September meeting we reviewed 16 complaints and five investigations. Of those 16 complaints, six were dismissed, four were dismissed with a letter of instruction, three were tabled and three were sent to investigation. Four of the investigations resulted in a notice being issued and one was dismissed with a letter of instruction. A couple of the complaints were Committee generated and had to do with the maintenance of the trust accounts by licensees. The Committee is very serious about their responsibility for assuring trust funds are properly accounted for by licensees.

Several of the complaints involved property management. Complaints were filed both against property managers and real estate licensees doing business as property managers and included licensees not being prompt in complying with the termination of contracts or agreements; failure to return keys timely; lack of property check-in lists; refusing to rent to a person; billing clients for repairs that were not made; and personal property being disposed of before a tenant had vacated a property. If you are performing property management activity you are required to comply with the Montana Landlord Tenant Act and the Federal Fair Housing Law. These rules should be periodically reviewed.

One interesting situation involved several complaints. A licensee advertised property as having access to Forest Service land. The licensee relied on information, which had come from the seller, and information used by several previous listing agents. It turned out the information was incorrect and a small strip of private land separated the private property from the Forest Service land. The Committee wrote letters of instruction to the various licensees stressing the necessity to verify all statements used in advertising.

During the October meeting we had three complaints, one was dismissed and two were dismissed with a letter of instruction. The one investigation was noticed for hearing.

One complaint involved a property manager who did not retain a portion of the security deposit to cover a broken mini-blind. A review of the management agreement showed the licensee was not responsible. It was dismissed with a letter of instruction suggesting the licensee pay the \$10 though there was no violation of Board rules.

The investigation involved a broker who was

selling a cabin owned by his mother-in-law. The size of the cabin appeared to be misrepresented as well as who owned the surrounding property, which was important because of access problems. The Committee also felt the licensee may be in violation of agency rules, so voted to notice for hearing.

The December meeting was another busy meeting. We had 17 complaints and four investigative reports to consider. We dismissed eight complaints, dismissed two others with letters of instruction, tabled two and sent five to investigation. Three investigations were noticed for hearing and one dismissed.

We again had a number of property management complaints from allowing a dog inside the house without authorization to inappropriate activity of an employee. According to the rules, the activities of an employee is the responsibility of the licensee and it was moved to investigate. Remember: The licensee is responsible for the actions of an employee and for any inaccurate information given out.

One complaint was particularly troublesome for the Committee. A licensee stated that the agency disclosure documents were not necessary in commercial transactions. The law does not exempt commercial transactions from the agency disclosure or representation requirements. That complaint was sent to investigation.

Another complaint sent to investigation involved the retention of forfeited earnest money to cover the cost of a survey. The buyer requested that the corners of the property be located prior to closing but the buy/sell was mute as to which party would be responsible for payment. The surveyor did the survey but the buyers backed out of the transaction. The licensee paid for the survey from the forfeited earned money and returned the balance to the seller. The seller contends they never agreed to pay for the survey, should not be responsible for the bill and the money should be returned. The Committee moved to investigate for possible violations of agency, standard of practice, misappropriation of funds, as well as other possible violations.

An investigative report showed a licensee had signed documents after receiving verbal OK from the seller, but without a power-of-attorney. This is a violation of the rules of the board and it was sent to investigation.

The last investigation involved water rights to a private water company. The purchase agreement called for the water rights to transfer with the property at closing. The rights were in the previous owner's name and could not be transferred because of some delinquent fees due the water company. The transaction closed and the rights were never transferred. The licensee could not prove he worked diligently to transfer the water rights. The licensee owned an adjoining property and later ended up purchasing the delinquent rights for his own use. The licensee was acting as a dual agent and the Committee felt there was reasonable cause to notice the licensee for hearing.

They're Poor, They're Minorities and They Want You To Be Their Broker.

New initiatives by Congress and the White House to bring as many as 1 million first-time homebuyers into the housing market may sound – to others – like good news for real estate, but it also could challenge broker policies that essentially state “we reserve the right to refuse service to anyone.”

HUD Secretary Andrew Cuomo said that as of October (2000), low-income Americans who receive Section 8 rental vouchers may use them, instead, to help make mortgage payments.

“We can tell 1.4 million families you don’t have to be a renter forever, you can be an owner, and we’re going to help you do it,” said Cuomo in making the announcement this fall.

“This program makes good sense. If a person can pay a mortgage for the same amount or less than they could pay the rent, why not allow them?”

Republican leaders also have moved similar legislation through Congress. Almost certainly, both political parties will claim responsibility for helping people get onto the first rung of the homeownership ladder.

The question that hasn’t been discussed, however, is whether the real estate community will really welcome these new buyers.

The issue involves conflicting concepts.

For home prices to be supported, and for individuals to move up to better properties, the real estate industry needs a constant supply of new buyers to come into the bottom of the pyramid. Those buyers, however, arguably are the ones who need full-service brokerage the most, yet are least able to afford it.

For the last few years roughly 6 million homes have been sold annually. Experts say 40 to 44 percent of those homes are purchased by first-time buyers – about 2.5 million families.

If the new Section 8 voucher plan works as well as Cuomo and the Republicans hope, it could bring another 1 million first-time buyers into the market – a sudden 40 percent increase.

By definition, however, those new buyers will be low-income Americans, and many will be ethnic minorities. Many also will be poorly educated.

Houses they will buy will be at the lowest end of the spectrum – meaning small commissions for the agents involved. Also, being first-time buyers, many will require extensive hand-holding by agents as they go through the complex real estate process.

In other words, the deals will be very labor intensive compared to the money to be earned.

For that reason brokers can decide, and many

have, that they don’t want to work low-end homes. NAR lawyer Ralph Holman, however, urges caution for companies doing that.

“In current law, there is nothing wrong, in a broker making a judgment that he doesn’t want to work with low-income buyers,” Holman said. “But I would add that I would implement that policy very carefully. I wouldn’t want to run afoul of any of the protected groups under Fair Housing law, nor would I want it perceived that I was running afoul of the law.”

Offices in communities with a large number of low-income buyers may find it difficult to justify a policy that turns those buyers away.

Low-income, first-time buyers who ask, “Why won’t you work with me?” are especially problematic.

“You need to be able to answer those questions in objective terms,” Holman said. “For instance, you want to be able to say, ‘I work with buyers who are looking for properties in approximately this geographical area where the sales price is usually \$xxx.’”

He emphasized, however, that brokers who adopt that policy need to back it up with consistency. Every agent in the office needs to be aware of the policy and, says the lawyer, it would be best to announce it to all buyers who come in the door, not just the ones you elect not to serve.

“Whether the person drives a 2000 Lexus or a ’72 Cavalier, it should be part of your presentation,” he said.

“The important question is, ‘Why would you implement this policy?’ It is unlawful to lie or use subterfuge” to violate Fair Housing law.

“The big risk here is being hit with a claim. Even if you win, there is a big downside here.”

For more information on how Section 8 vouchers are used as payments, see the “Documents” section of www.reintel.com

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IN THE CASE OF

These cases are excerpts from the 1999 ARELLO Legal & Professional Conduct Committee Annual Report. The report is printed in the ARELLO Digest in its entirety and can be obtained by contacting ARELLO Headquarters at PO Box 230159, Montgomery AL 36123-0159; by phone at 334-260-2902 or by e-mail at malbox@ARELLO.org.

Svendson v. Stock, 979 P.2d 476 (1999)
Court of Appeals of Washington

Facts: The Stocks listed their home with Edwards, a real estate agent. At the time of the listing, the Stocks filled out a seller disclosure form. Initially, they answered "Yes" to the question concerning drainage problems because on two recent occasions, a storm water drain on a neighboring property had become blocked and water overflowed onto their property. Edwards counseled them to change their answer to "No" because the county had unblocked the drain and there had been no recurrence of the problem. Although they changed their answer, the Stocks nevertheless instructed Edwards to disclose the past problem to prospective purchasers. The Svensons bought the property. Edwards did not disclose the flooding problem. Soon after the sale closed, the property flooded due to the drain which had become blocked again. Svendson sued the seller and the real estate firm and won on a claim of fraudulent concealment.

Issue: In appeal, the agent asserted there had been no fraudulent concealment because the past drainage problem had been corrected at the time of the sale. Washington statutes make a broker liable for an inaccuracy on a seller disclosure form only if the broker had actual knowledge of an undisclosed defect.

Held: The court of appeals agreed that a broker could only be held liable if he or she had actual knowledge of an inaccurate statement on the form and also held that a broker was not liable if he or she reasonably believed that a past defect had been corrected. The court affirmed the damage award in this case, though, because there was substantial evidence to show that Edwards, the agent, had actual knowledge of the defect. The fact that her seller-clients had no confidence that the problem was corrected made her belief in the repair unreasonable.

Furla v. Jon Douglas Co. 65 Cal. App 4th 1069 (1998) California Court of Appeals

The listing agent in this case did not measure the home, using instead the 5,500-square-foot figure supplied by the seller's daughter from the architectural plans used to build the home. The listing contained the disclaimer, "Information Deemed Reliable but not Guaranteed." The form contract which the buyer and seller signed contained a provision in which the broker disclaimed responsibility for square footage, among other things, and indicated that the buyer could verify square footage by having a professional appraiser

Auditor Allstars

These brokers and property managers were given a clean audit with no exceptions. These audits were reported to the board at their September, October and December meetings.

Twyla Klundt	Susan Royer
Randy Shelton	Phyllis Sprunger
Ronald Lambrecht	T Scott Strellnauer
Craig Fauntleroy	J Lee Zignego
Edwin Jordan	Joseph Bosirico
David Tone	Berton Schultz
Gregory Carter	Roger Carlson
W. Turner Askew	Michael Maddy
Patrick Donovan	Carl Seifert
Gerald Luderman	Karen Cote
Norman Nelson	Lucinda Willis
Jeffrey Cornell	H Kermit Andersen
Adam Kirsch	Beverly Luedtke
Nanci Agee	Donald Ray
Eileen Hollack	Priscilla Prewitt
William Zoebisch	Ronald Conklin
Dale Berry	Brian Berry
E Marie Marsh	Merle Unruh
Sandra Brown	Jeffrey Rogers

measure the property. The contract also recited that the buyer had an independent duty under California law to use reasonable care to protect himself concerning facts about the property which were within his observation.

The buyer did not receive a copy of the appraisal done in connection with his loan. If he had, he would have seen that it stated that the home contained only 4300 sq. ft. The buyer learned the actual size of the home when he decided to list it for sale a couple of years later. He sued the seller and the seller's agents on claims of misrepresentation and negligence.

The trial court granted summary judgment in favor of the defendants. On appeal, the trial court was reversed because there had been disputed factual issues which should have precluded summary judgment. The case was remanded to the trial court to conduct further proceedings consistent with California law as stated in the opinion: 1) a buyer is entitled to rely upon a seller's representations concerning the area of the property being sold, and is not required to hire an expert to discover the falsity of the seller's representations; and 2) the buyer did have a duty to protect himself concerning issues that were obvious and patent, but whether he had failed in that duty would have to be determined by the trier of fact after hearing all the evidence.

Note: The defendants tried to argue that the sq. ft. figure in the listing had been intended as an "approximate only," not a figure to be relied upon. The court was clearly not impressed with this argument, defining "approximation" as "a little more or less" or "close", and calling the 5500 sq. ft figure "wildly exaggerated" and "grossly inaccurate."

Beagle Elected Director

John Beagle, Chair of the Montana Board of Realty Regulation, was re-elected to serve as a Director to the Association of Real Estate License Law Officials (ARELLO) Board of Directors, representing the Western District. John has served as an active member of ARELLO, serving on a number of committees and participating in various programs and forums.

ARELLO has played a major role in the regulation of the real estate industry. Montana is pleased to have Mr. Beagle serve in such a capacity and we congratulate him on his election.

Company Cautions First-Time Buyers

A home inspection company is warning that the first-time homebuyers have such easy access to the market, many are buying as much house as they can without being aware of how hidden defects can impact their budget and the value of the property.

Kenneth Austin, chairman of the HouseMaster home inspection company, suggests both buyer agents and listing agents should do all they can to make sure first-time buyers are secure in their purchases.

"The condition of a house is not taken into consideration by the mortgage lender, so it isn't factored in with fixed expenses," Austin said. "This can become a problem, considering the fact that two out of five – 40 percent – of homes for sale have at least one serious defect when they go on the market."

Austin cited several common defects found in resale homes and what they typically cost to repair or replace:

- Asphalt shingle roof, between \$1,500 and \$2,200.
- Electrical service upgrade, between \$600 and \$1,200
- Shower pan, between \$900 and \$1,600
- Warm air furnace, between \$1,500 and \$1,800
- Inadequate attic insulation, between \$800 and \$1,100
- Air-conditioning compressor, between \$800 and \$1,200

Condition is becoming a major factor in determining how good a deal a particular home actually is, Austin says.

"It becomes even more important for first-time buyers who are often stretched to the max financially after putting up the downpayment. Many young couples who buy their first home are often unaware of what to look for with regard to the mechanical systems, structure and foundation in a home."

Austin argues that seller inspections are worth their cost.

"If sellers have their homes inspected at the time of listing, they can, in a factual, rather than emotional way, explain to the buyer that either the price has been adjusted to reflect the cost of the repair, or that the owners will make the repairs," Austin said.

"A home inspection order by the seller at the time of listing can give the seller an added advantage because it allows a buyer, first time or move up, to make a more realistic comparison between homes they are considering. The more educated a buyer is, the better it is for everyone in the long run."

Austin said basement water penetration is the most common problem found in homes of all ages: Making the necessary repairs, he said, may cost anywhere from \$600 to \$800 to install a sump pit/pump, to \$3,500 to \$5,000 for waterproofing.

"Mixed" plumbing – meaning a combination of materials, such as copper, brass and lead – is found in 44.2 percent of homes 30 years and older, but rarely in homes less than 12 years old.

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Editors Note: This will become more of an issue as low-income homebuyers make up a larger percentage of the buying market as noted in the enclosed article "They're Poor, They're Minorities and They Want You To Be Their Broker" on page 5

Reciprocity List Growing

Montana has added several states and a Canadian Province to our list of jurisdictions offering reciprocity. Please contact the jurisdiction for forms, fees and information on how to obtain a reciprocal license with them. These reciprocity licenses agreements cover real estate only.

Alberta Canada	403-228-2954
Colorado	303-894-2166
Idaho	208-334-3285
Iowa	515-281-3183
Nebraska	402-471-2004
North Dakota	701-328-9749
Oregon	503-378-4170
South Dakota	605-773-3600
Tennessee	615-741-2273
Utah	801-530-6747
Wyoming	307-777-7141

BOARD OF REALTY REGULATION CALENDAR AT A GLANCE

January

- 1/1/01 BOARD OFFICE CLOSED FOR NEW YEAR
- 1/15/01 BOARD OFFICE CLOSED FOR MARTIN LUTHER KING JR. DAY
- 1/16-17/01 MEETING OF THE BOARD OF REALTY REGUALTION - HELENA
- 1/20/01 REAL ESTATE LICENSING EXAMINATION – BILLINGS
- 1/24-27/01 PROPERTY MANAGEMENT PRE-LICENSING COURSE & EXAM - HELENA

February

- 2/17/01 REAL ESTATE LICENSING EXAMINATION – MISSOULA
- 2/19/01 BOARD OFFICE CLOSED FOR PRESIDENTS DAY

March

- 3/1-2/01 MEETING OF THE BOARD OF REATLY REGULATION – HELENA
- 3/17/01 REAL ESTATE LICENSING EXAMINATION - BILLINGS

BOARD OF REALTY REGULATION
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